Appln. No. 10/646,156
Amendment dated September 23, 2008
Reply to Office Action mailed May 23, 2008

REMARKS

Reconsideration is respectfully requested.

Claims 1 through 6 and 19 through 22 remain in this application. Claims 7 through 18 have been cancelled. No claims have been withdrawn. Claims 23 and 24 have been added.

Paragraph 4 of the Office Action

Claims 1 through 18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Drosset. (It is noted that claims 12 through 18 were previously cancelled, and thus are not currently under consideration, and that claims 19 through 22 have been added, but are not addressed in the formal rejection. However, the body of the rejection does appear to include statements that address claims 19 through 22. Clarification is respectfully requested.)

Claim 1 requires, in part, "transmitting content in a streaming content format", "receiving a request to store a particular piece of the content" and "delivering said particular piece of the content in an archival format to a storage media of a user when said request to store said particular piece of the content is received". Claim 20 requires "transmitting content in a *first streaming content format*", "receiving a request to store a particular piece of the transmitted content", "*delivering said particular piece of the content in a second archival format to a storage media of a user* when the request to store the particular piece of the content is received", and "wherein the second archival format *is different from* the first streaming content format" (all emphasis added).

In the Advisory Action mailed August 19, 2008, it is alleged that the "streaming content format prevents storage of the content" is disclosed by Drosset at col. 5, line 65 through col. 6, line 10. However, looking to the

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text of the Drosset patent at col. 5, line 65 through col. 6, line 10, it states
that:

> Examples of streaming audio software applications that may be
> adapted for use with the present invention are Microsoft Media
> Services, Quicktime, and ReaLPlayer. Streaming audio applications
> typically sent an audio file in a series of packets that include parts of
> the song stored in the audio file. The streaming application typically
> only stores a few seconds of an audio sequence in order to account for
> network or system latency. Since only a small portion of the audio file
> is typically resident in the client device, streaming applications
> present less opportunity for a user to copy and disseminate an audio
> file, thereby affording greater protection to the owner of the audio
> file.

However, simply because the Drosset patent discusses that only "small
portion[s] of the audio file" are resident on the client device, and that
"streaming applications present less opportunity for a user to copy and
disseminate an audio file", it is submitted that this does not disclose to one
of ordinary skill in the art a "streaming content format *prevents* storage of
the content" as required by claims 1 et al. Simply because the Drosset
system sends out small portions of the file, and this might make it more
difficult to copy and disseminate the file, does not disclose that the format
<u>prevents</u> streamed content from being stored on the computer.

Further, turning back to the "Response to Arguments" section of the
final Office Action, it is there alleged that:

> **Argument:** Drosset does not disclose the second streaming
> content format preventing storage of the transmitted content on the
> storage media of the user.
> **Response:** Drosset does not disclose the first format and the
> second streaming content format preventing storage of the transmitted
> content on the storage media of the user (stream audio, fig 7,
> Microsoft media services col 7, lines 1-5, the prior teaches streaming
> content which can not be stored by using software Microsoft media
> services, Further teaches MP3, content can be downloaded that
> anticipates storing on the client device).

Looking to the portion of the Drosset patent that is referenced in the
"Response", col. 7, lines 1 through 12 of Drosset states that:

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        There are many different ways that a user can search for and find music to populate a playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one. A window appears at the user interface prompting the user to name the playlist. The user's selection is turned into a playlist ID and entered into a data entry for the user or, if it already exists, retrieved from the data entry. The user then clicks on another icon to select the song that is currently playing and the server adds the audio ID for the song to the selected playlist.

In this portion of the Drosset patent, as will also be pointed out for the other referenced portions of the Drosset patent below, there is no distinction (that would be apparent to one of ordinary skill in the art) made between any "streaming content format [that] prevents storage of the content" and any "archival format [that} allows storage of the content" as required by the claims. Instead, the Drosset patent here discusses adding songs to a playlist. including songs that are currently streaming. However, this appears to be nothing more than adding the identity of the song (e.g., as a "playlist ID" or "audio ID") to the playlist, and there is no discussion of any storage of the song itself, especially in an "archival format" that is different than the streaming format (see, e.g., claim 20).

        With respect to the showing in Figure 7, it is submitted that what is shown here is merely the streaming of "audio data" to the client, without any indication that there is any *"delivering said particular piece of the content in a second archival format to a storage media of a user* when the request to store the particular piece of the content is received" as required by, for example, claim 20. Further, the only request from the client appears to be with respect to the playlist, and not to the any delivery of a piece of content.

        It is thus submitted that this portion of the Drosset patent, as well as the portions discussed below in the context of the rejection, does not provide an actual disclosure of the claimed subject matter.

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Turning now to the rejection section of the Office Action, it is alleged in the Office Action that the requirements of the claims are disclosed in the Drosset patent at col. 2, lines 38 through 52 and col. 4, lines 44 through 52. Drosset states at col. 2, lines 38 through 52 that (emphasis added):

> The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server. Metrics for play-out of each audio file, such as duration of play-out or number of play-outs, are maintained for the audio files and used to allocate payment of royalties or license fees to owners of rights in the audio files, such as copyrights or phonograph rights. The user may also maintain and modify customized playlists through the server and send playlists to other users.

However, nothing here suggests that there are two formats for providing the content—namely a "streaming content format [that] prevents storage of the content" and an "archival format [that} allows storage of the content". Instead, the Drosset patent only vaguely refers to "streaming or download of audio data files or customized playlists", which does not disclose or suggest that there might be more than one format—one for streaming and one for download. In fact, the statements in Drosset are equally consistent with the interpretation that both streaming and downloads are in the same format. In fact, the statements in this portion of Drosset appear to suggest that perhaps all songs are available for storage, since copyright information is maintained for all songs. In any event, nothing here suggests one format for "streaming content format [to] prevent[] storage of the content" and another format for "allow[ing] storage of the content". It is further submitted that the disclosure of the "MP3" format in Drosset (and mentioned in the rejection of the Office Action) would not suggest to one of ordinary skill in the art the claimed "format [to] prevent[] storage of the content".

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And Drosset further states at col. 4, lines 44 through 52 that:

> The table in FIG. 4 also includes an Audio Data pointer that indicates the actual location of the digital codes of the audio file itself. The digital codes may be MPEG 3 (MP3) codes or similar data encoding methods. See the International Organisation for Standardisation (ISO) for further information relating to the Motion Picture Engineering Group (MPEG) standards for coding of moving pictures and associated audio for digital storage media at www.cselt.it/mpeg/standards.

However, this portion of Drosset does nothing to suggest that there are formats for the different purposes set forth in the language of the claims. In fact, one of ordinary skill in the art is likely to understand that the MP3 format may be the only format employed.

It is noted that these portions of the Drosset patent does not disclose the requirements of new claim 20, which requires in part "wherein the second archival format is different from the first streaming content format, the second streaming content format preventing storage of the transmitted content on the storage media of the user and the second archival format allowing storage of the delivered content on the storage media of the user".

It is further alleged in the rejection of the Office Action that:

> wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40)

Looking to the referenced portions of the Drosset patent, the portions at col. 2 and col. 4 have been addressed about, and do not disclose the request and the delivery occurring *in real time* as required by the language of claim 1. Looking to col. 3 at lines 20 through 34, it is stated there that:

> The architecture of FIG. 1 illustrates a variety of client devices and network configurations suitable for use according to the present invention. The client devices may include dedicated audio file devices, such as MP3 readers, or more generalized devices with audio capability, such as personal computers, personal data assistants, or

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laptop computers, that may be equipped with sound cards or similar equipment that permit an audio signal to be generated in response to an audio data file. Radio-frequency enabled devices, such as cell phones, automobile-based communication devices, or more general computing devices with wireless communication equipment, may also be used in accordance with the present invention.

However, this portion of the Drosset patent appears to more directed to the types of devices that may be used, rather than the timing of any request or delivery. It is submitted that nothing here suggests the performance of the request and delivery in real time. Further, Drosset states at col. 21, lines 35 through 40 that (emphasis added):

> Current musical access based <u>recommendations</u> may be based on user interactions involving a particular album or song during the current session and may be used to <u>generate a recommendation list</u> utilizing a real-time collaborative filtering engine such as Net Perceptions Group Lens, or Andromedia's Like Minds. Examples of <u>user actions that may trigger this recommendation</u> approach may include: choosing a song to play, start of next song in the play list, positive rating of a newly heard song, selection of a promotional album for listening, and purchase of an album or a song.

This portion of the Drosset patent appears to discussing the making of recommendations for listening by the user based upon selections by the user, but does not discuss timing of any request and delivery of content in an archival format. A recommendation of a song by the Drosset system is not a request by a user, and therefore it is submitted that the Drosset system would not lead one of ordinary skill in the art to the claimed invention.

Added claim 21 requires that "the delivering of the particular piece of the content in the second archival format to the storage media of the user *occurs concurrently* with the transmitting of the content in the first streaming content format" (emphasis added). The rejection of the Office Action refers to the Drosset patent at col. 2, lines 38 through 52, which states:

> The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has

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> access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server. Metrics for play-out of each audio file, such as duration of play-out or number of play-outs, are maintained for the audio files and used to allocate payment of royalties or license fees to owners of rights in the audio files, such as copyrights or phonograph rights. The user may also maintain and modify customized playlists through the server and send playlists to other users.

However, nothing in this portion of the Drosset patent discusses or discloses any concurrent delivery of the content in a second archival format with the transmitting in a first streaming content format. The rejection further refers to col. 3, lines 20 through 34, which states:

> The architecture of FIG. 1 illustrates a variety of client devices and network configurations suitable for use according to the present invention. The client devices may include dedicated audio file devices, such as MP3 readers, or more generalized devices with audio capability, such as personal computers, personal data assistants, or laptop computers, that may be equipped with sound cards or similar equipment that permit an audio signal to be generated in response to an audio data file. Radio-frequency enabled devices, such as cell phones, automobile-based communication devices, or more general computing devices with wireless communication equipment, may also be used in accordance with the present invention.

Again, this portion does not appear to disclose the requirements of claim 21, and merely mentions different devices that may be employed with the Drosset system, which does not disclose the formats and timing required by claim 21. The rejection also refers to col. 6, line 65 through col. 7, line 5, which states

> The user may be then be prompted to select songs to place in the list.
> There are many different ways that a user can search for and find music to populate a playlist according to the present invention. For example, a user may add to a playlist a song that is currently being streamed out to the user. To begin, a user clicks on an icon in order to create new playlist or select an existing one.

Nothing here discusses or suggests that audio is delivered and transmitted in two different formats "concurrently" as required by claim 21. It is

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therefore submitted that the Drosset patent cannot lead one of ordinary skill in the art to the claimed invention.

Claim 22 requires that "the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format, and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format". The rejection cites basically the same portions of the Drosset patent as those that were cited with respect to claim 21, and it is noted that since there is no storing of content in a second archival format, that there could not be any request to store in the second format that occurs during the transmission in a first streaming format. As noted above, Drosset discusses a request to add an audio ID to a playlist, rather than any request for the content itself, especially in a second and different format.

It is therefore submitted that the Drosset patent would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claims 1 and 20 especially with the requirements set forth above, and therefore it is submitted that claims 1 and 20 are allowable over the prior art. Further, claims 2 through 6 and 19, and 21 through 22, which depend from claim 1 and claim 20, respectively, also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Withdrawal of the §102(e) rejection of claims 1 through 6 and 19 through 22 is therefore respectfully requested.
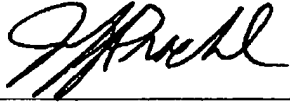
CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

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Respectfully submitted,

WOODS, FULLER, SHULTZ & SMITH P.C.

_____   Date: _Sep. 23, 2008_
Jeffrey A. Proehl (Reg. No. 35,987)
Customer No. **40,158**
P.O. Box 5027
Sioux Falls, SD 57117-5027
(605)336-3890 FAX (605)339-3357

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